

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL J. QUILLING, in his capacity as
RECEIVER FOR AMERICAN REALTY
TRUST, INC.

Plaintiff

v.

DYNEX CAPITAL, INC.

Defendant

Case No. _____

NOTICE OF REMOVAL

Defendant Dynex Capital, Inc. (“Dynex Capital”) submits this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446. Diversity jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a). In support of removal, Defendant states as follows:

State Court Action Being Removed

1. On May 24, 2018, Michael J. Quilling, acting in his capacity as Receiver of American Realty Trust, Inc., filed his “Third-Party Plaintiff’s Original Petition” (“Original Petition”) in a suit styled *Dynex Commercial, Inc. a/k/a DCI Commercial Inc. v. Dynex Capital, Inc.* under Cause No. DC-03-00675 in the 68th District Court of Dallas County, Texas (the “Lawsuit”). The original claims in the Lawsuit were fully and finally resolved by a Final Judgment dated July 20, 2015. As a result, Dynex Capital removes the Receiver’s separate and independent action set out in the Original Petition.

2. Pursuant to Local Rule 81.1(a)(4)(A), an index of all documents filed in the state court related to the Original Petition is attached as Exhibit A. Defendant is not aware of any other process, pleadings, or orders served upon or delivered related to the Original Petition.

3. Pursuant to Local Rule 81.1(a)(4)(B), a copy of the docket sheet in the state court related to the Original Petition is attached as Exhibit B.

4. Pursuant to Local Rule 81.1(a)(4)(C), a copy of all documents filed in the state court related to the Original Petition is attached as Exhibit C.

5. Pursuant to Local Rule 81.1(a)(4)(D), a certificate of interested persons is attached as Exhibit D.

6. Defendant is entitled to remove the Receiver's separate and independent action set out in the Original Petition to this Court based on diversity jurisdiction for the reasons that follow.

**There Is Complete Diversity Of Citizenship
Between Plaintiff and Defendant**

7. Pursuant to 28 U.S.C. §1332(a)(3), a district court has original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states and in which a citizen or subject of a foreign state is an additional party. Pursuant to 28 U.S.C. §1332(c)(1), "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business...."

8. According to the Original Petition, the Receiver, Michael J. Quilling, is an individual citizen of Texas. Pl's Orig. Pet. ¶ 6. "With respect to removability of a suit on the ground of diversity of citizenship, the citizenship of the receiver governs when he or she sues in a representative capacity, or is sued in such capacity." 77 C.J.S. Removal of Cases § 103 (June 2018).

9. According to the Original Petition, Defendant Dynex Capital is a Virginia corporation with its principal place of business in Glen Allen, Virginia. Pl's Orig. Pet. ¶ 3.

10. Therefore, this case may be removed to this Court pursuant to 28 U.S.C. § 1441 because there is complete diversity of citizenship between Defendant and Plaintiff.

The Amount In Controversy Exceeds \$75,000

11. The Original Petition alleges damages in the amount of \$11,341,360.65. Pl's Orig. Pet. ¶ 11 & Exhibit 5.

12. Without admitting that Plaintiff's claim has any merit, or that Plaintiff is entitled to recover any amount based on the claim in his Original Petition, Defendant acknowledges that the amount in controversy, as alleged by Plaintiff, exceeds \$75,000.

The Notice of Removal Complies With 28 U.S.C. § 1446

13. Defendant Dynex Capital has filed this Notice of Removal within one year of the date the Original Petition was filed and within thirty days of service of the Original Petition on Defendant. Removal to this Court is timely under 28 U.S.C. § 1446(b).

14. Promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff by and through his counsel of record and to the Clerk of the Court of Dallas County, Texas, pursuant to 28 U.S.C. § 1446(d). A true and correct copy of the Notice that Defendant will provide to Plaintiff and to the Clerk (without exhibits) is attached hereto as Exhibit E.

Venue Is Proper In The Northern District Of Texas

15. Venue is proper in this Court because the action is being removed from Dallas County District Court, which lies in the Northern District of Texas, Dallas Division. *See* 28 U.S.C. §§ 1441(a), 1446(a).

16. Pursuant to Local Rule 81.1(a)(1) & (2), a completed civil coversheet and a completed supplemental civil cover sheet, which accurately describe the case being removed and which reflect the case as it was styled in the state court action, are being filed contemporaneously

with this Notice.

Defendant Dynex Capital effectuates and gives notice of removal of the separate and independent action set out in the Original Petition to the United States District Court for the Northern District of Texas because: (1) there is complete diversity of citizenship between Plaintiff and Defendant; (2) the amount in controversy exceeds \$75,000 exclusive of interest and costs; (3) removal is timely; and (4) venue is proper.

Respectfully Submitted,

s/Edward F. Fernandes

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ATTORNEYS FOR DYNEX CAPITAL, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served through the Court's ECF electronic filing system to the known users of the Court's ECF filing system on June 20, 2018.

s/Edward F. Fernandes
Edward F. Fernandes